IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6076 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GSRTC - Appellant(s)
Versus
KHALID YAKUB TAPLA - Defendant(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
MR MA KHARADI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.06.99 passed by the Motor Accident Claims Tribunal, Panchmahals at Godhra in MACP No. 1110 of 1994 whereby the Tribunal awarded a sum of Rs. 45,000/- by way of compensation to the original claimant payable by the original opponent no.2 alongwith interest at the rate of 15% per annum.

2. The original claimant had filed claim petition claiming compensation to the tune of Rs. 50,000/- in respect of the accident which occurred on 02.11.89 while

the original claimant was riding his cycle from Polan Bajar to Station Road. At that time, an S.T bus bearing no. GRY 6402 driven by original opponent no.1 rashly and negligently dashed with the original claimant thereby causing injuries on his leg and other parts of the body. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr Dave, learned counsel appearing for Mr Y.S Lakhani for the appellant has contended that at the time of the accident the claimant was only about 11 or 12 years old and therefore the income of Rs. 1500/- assessed by the Tribunal is on the higher side in view of the fact that there is no cogent or reliable evidence even through deposition that the claimant was earning the said amount.

3.1 He has further contended that the amount which was awarded under the head of special diet, transportation, pain shock and suffering is also on the higher side and the same is required to be reduced.

3.2 Mr Dave has also contended that though the Tribunal has discretionary power to award interest, in the present case interest at the rate of 15% is improper, unjust and

against the principles of natural justice and equity. Mr Dave has placed reliance on a decision of the Karnataka High Court in the case of Managing Director, Karnataka Power Corporation Ltd. v. Geetha and others reported in 1988 ACJ 251 in order to substantiate his claim

4. Mr Kharadi, learned counsel for the respondent has supported the award of the Tribunal and has submitted that looking to the age of the claimant and the injuries sustained by him the award passed by the Tribunal is in accordance with law. He has further submitted that the Tribunal in view of the discretionary powers has levied interest which does not require any interference by this Court.

5. Heard learned counsel for the parties and gone through the award of the Tribunal and the materials placed on record. As regards the contention of pain, shock and suffering is concerned, in my opinion looking to the days of hospitalisation, the percentage of disability, Rs. 20,000/- is on the higher side. Moreover, considering all these aspects and also in view of the decision of this court in the case of **Babu Mansa v. Ahmedabad Municipal Corporation and Ors reported in 1978(19) GLR 492**, an amount of Rs. 10,000/- as

compensation towards pain, shock and suffering will be just and proper.

5.1 As regards the contention regarding future loss of income is concerned, the monthly income assessed by the Tribunal is Rs. 1500/- per month which in my view is on the higher side. Looking to the overall facts and circumstances of the case, I am of the view that the monthly income of the claimant should be assessed at Rs. 450/- per month. As per the case of ***"U.P. State Road Transport Corporation (supra)*** the future loss is to be calculated on the basis of average of double the income which comes to Rs. 675/- rounded off to Rs. 700 in the present case after taking the monthly income at Rs. 450/-. Looking to the disability of 5% the per month loss shall come to Rs. 35/- which in turn is Rs. 420/- per annum.

5.2 The Tribunal has in the present case applied the multiplier of 15 years which in my opinion is on the lower side and instead a multiplier of 18 ought to have been applied. Hence, the future loss of income shall come to Rs. 7,560/- (Rs. 420/- x 18).

5.3 Under the head of loss of income for six months, I

am of the opinion that instead of Rs. 2700/-, a sum of Rs. 2,500/- would be appropriate whereas under all the other heads the awarded amount seems to be just and proper. In that view of the matter, the appellant in total shall be entitled to an amount of Rs. **28,860/-** by way of compensation which includes Rs. 7,560/- for future loss of income, Rs. 10000/- for pain shock and suffering, Rs. 2500/- for actual loss of income, Rs. 800 for nursing charges, Rs. 5000/- for treatment and medicine, Rs. 2000/- for special diet and Rs. 1000/- for transportation charges.

6. However, as far as the contention regarding rate of interest is concerned, I am of the view that the same is on a higher sider and is accordingly required to be modified. In the case of Managing Director, Karnataka Power Corporation Ltd.(supra), it is held that though interest is a matter of discretion of the Tribunal, it should be exercised judicially and judiciously not arbitrarily or capriciously but in accordance with sound principles as interest is not awarded to plaintiff as damages but for being kept out of the money which ought to have been paid to him.

6.1 Even in the case of Parmar Kiritbhai Natwarlal v. Modi Somchand Chandulal & Ors decided by this Court in

First Appeal 392 of 1988 vide order dated 08.08.2006 after considering various cases and law laid down by the Apex Court, this Court has held in para 13 as under:

> "13. Thus, the interest is being granted to the claimant for being kept out of money which ought to have been paid to the claimant. I am also of the view that it is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12 per cent. Moreover, the respondent is engaged in a public utility service, which should not be burdened with heavy interest. Apart from that, looking to the present downward trend of rate of interest, and considering the above judgements, I am of the view that interest at the rate of 6% would meet the ends of justice. "

In that view of the matter, I am of the opinion that levying running interest at the then prevailing rate i.e 9% will be just and proper in the present case.

7. In the premises aforesaid, the appeal is allowed to the aforesaid extent. The original claimant shall be entitled to a sum of Rs. 28,860/- towards compensation with running interest at the rate of 9% per annum from the date of application till realization. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//